IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1987 OF 2004.

Dr.Vipan Kumar.... ....Petitioner.
V/s
State of Maharashtra & Ors..... .....Respondents.

Mr.U.A.Udaipur i/by M/s.Udaipur & Co. for the petitioner.

Mr.M.D.Naik for respondent No.1.

Mr.J.S.Chandnani for respondent Nos.5, 6 and 7.

Mr.P.Janardan for respondent No.8.

CORAM:V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

19/10/04

PC:

By this the petitioner seeks quashing of the resolution passed by respondent No.5 a private college in Bombay suspending the petitioner from services for reasons mentioned in the resolution. The other prayers are consequential prayers.

2. In effect the petitioner seeks exercise of writ jurisdiction against a private institution which is R.D.National College, Bandra. Writ for such purpose against private institution is not maintainable. The effect that no such writ is maintainable is held by this Court in good number of cases. Apart from that the contention raised is that the National College who is the respondent is fully financed by the Government of Maharashtra and is

therefore deemed to be a State within the meaning of article 12. We need not go into that aspect whether it is State under Article 12 or not. Assuming it to be so it is made State or deemed to be State under Article 12 for the purposes of part 3 of the Constitution of India and for other purposes, what is sought before us is the suspension of resolution passed by a private college which has its own Code of Conduct and the rules. There is no question of any violation of fundamental right of the petitioner by effecting suspension under the rules permissible for that purpose. That being the position writ petition is not tenable. Several judgments were cited before us to contend that the petition is maintainable. A Division Bench of the Rajasthan High Court in the case of ***Bhanwar Lal Paliwal*** V. ***State of Rajasthan & Ors***, 2001 (7) SLR 107 has held the petition to be maintainable. Firstly that judgment does not consider the question of maintainability, secondly it was a petition by the employee of the Government of Rajasthan which was squarely a State and therefore it is liable to be distinguished as different on facts. Another is Single Judge judgment of Allahabad High Court in the case of ***Ranidas*** V. ***U.P.Financial Corpn. and Ors.***, 2004 (2) Banker's Journal 496 where it is said that alternate remedy is not an absolute bar. The petitioner is not being unsuited for existence of alternate remedy. The petition is liable to be rejected as not maintainable. Reliance was also placed on a judgment of a Division Bench of this Court in case of ***Madhukar Namdeo Patil*** V. ***Chairman, Sudhagad Education Society & Ors***., 2001 (1) SLR 485 under the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977. It is a judgment under the statute pertaining to observance of provisions of that statute while effecting suspension. The suspension of the petitioner is under the Rules of National College and not under any statutory provisions and therefore this judgment also

is not applicable. In the judgment of the Supreme Court in the case of ***Dr.Smt.Kuntesh Gupta*** V. ***Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Ors.,*** AIR 1987 SC 2186 the question was not of maintainability of the petition. Therefore petition was entertained and dismissed. Here at the threshold, in our opinion, petition is not liable to be maintained at all. Leaving the petitioner the remedies that may be available to him for challenging the order of suspension this petition is rejected.